

CREW | citizens for responsibility and ethics in washington

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November 18, 2015

Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Jeff S. Jordan, Supervisory Attorney
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 6612/Amended Complaint

Dear Mr. Jordan:

Please find under cover of this letter an amended complaint in MUR 6612. We file this amended complaint to supplement the complainants provided in CREW's original complaint, filed on July 24, 2012. In the three years during which CREW's complaint has been pending, CREW has experienced staff changes necessitating an update to the parties to the complaint. CREW submits this amended complaint to substitute me, CREW's current executive director, as a complainant for CREW's previous executive director, Melanie Sloan. The amendments also amend allegations specific to CREW's previous deputy director, Robin Powers. Accordingly, the amended complaint includes new allegations specific to me (*see* Am. Compl. ¶¶ 1, 6, and conclusion), updates the allegations specific to Ms. Powers and clarifies that she remains a complainant (*see id.* ¶¶ 1, 7, and conclusion), and removes allegations specific to Ms. Sloan. The amended complaint further clarifies that the relief sought includes ordering respondents to file with the FEC and make public appropriate disclosure reports. The exhibits to the amended complaint are identical to the exhibits to the original complaint and are incorporated therein, but, in the interest of not duplicating copies in the administrative record, CREW does not resubmit the exhibits.

Finally, please note that our address has changed. Please direct all future correspondence to the address below.

Received
Federal Election Commission
2015 NOV 18 PM 2:10
Office of General Counsel

Jeff Jordan,
November 18, 2015
Page 2 of 2

Sincerely,



Noah Bookbinder
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Citizens for Responsibility and Ethics
in Washington
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Washington, D.C. 20001
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nbookbinder@citizensforethics.org

Encl.

FEDERAL ELECTION COMMISSION

2015 NOV 18 PM 2:11

In the matter of:

Crossroads Grassroots Policy Strategies

MUR No. 6612

AMENDED COMPLAINT

1. Citizens for Responsibility and Ethics in Washington ("CREW"), Noah Bookbinder, and Robin Powers bring this complaint before the Federal Election Commission ("FEC or "Commission") seeking an immediate investigation and enforcement action against Crossroads Grassroots Policy Strategies ("Crossroads GPS") for direct and serious violations of the Federal Election Campaign Act ("FECA").

Complainants

2. Complainant CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. CREW is dedicated to empowering citizens to have an influential voice in government decisions and in the governmental decision-making process. CREW uses a combination of research, litigation, and advocacy to advance its mission.

3. In furtherance of its mission, CREW seeks to expose unethical and illegal conduct of those involved in government. One way CREW does this is by educating citizens regarding the integrity of the electoral process and our system of government. Toward this end, CREW monitors the campaign finance activities of those who run for federal office and publicizes those who violate federal campaign finance laws through its website, press releases and other methods

of distribution. CREW also files complaints with the FEC when it discovers violations of the FECA. Publicizing campaign finance violators and filing complaints with the FEC serves CREW's mission of keeping the public informed about individuals and entities that violate campaign finance laws and deterring future violations of campaign finance law.

4. In order to assess whether an individual or regulated entity is complying with federal campaign finance law, CREW needs the information contained in independent expenditure disclosure reports that must be filed pursuant to the FECA, 2 U.S.C. §§ 434(c), (g); 11 C.F.R. § 109.10(b)-(d). CREW is hindered in its programmatic activity when an individual or regulated entity fails to disclose campaign finance information in reports required by the FECA.

5. CREW relies on the FEC's proper administration of the FECA's reporting requirements because the FECA-mandated disclosure reports are the only source of information CREW can use to determine if an individual or entity is complying with the FECA. The proper administration of the FECA's reporting requirements includes mandating that all disclosure reports required by the FECA are properly and timely filed with the FEC. CREW is hindered in its programmatic activity when the FEC fails to properly administer the FECA's reporting requirements.

6. Complainant Noah Bookbinder is the executive director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, he has been and remains a citizen of the United States and a registered voter and resident of Maryland. As a registered voter, Mr. Bookbinder is entitled to receive information contained in disclosure reports required by the FECA, 2 U.S.C. § 434; 11 C.F.R. § 104.1. Mr. Bookbinder is harmed when an individual, candidate, political committee or other regulated entity fails to report campaign

finance activity as required by the FECA. *See FEC v. Akins*, 524 U.S. 11, 19 (1998), *quoting Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976) (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Mr. Bookbinder is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting his ability to review campaign finance information.

7. Complainant Robin Powers was the deputy director of Citizens for Responsibility and Ethics in Washington. At all times relevant to the complaint, she has been and remains a citizen of the United States and a registered voter and resident of the Commonwealth of Virginia. As a registered voter, Ms. Powers is entitled to receive information contained in disclosure reports required by the FECA, 2 U.S.C. § 434; 11 C.F.R. § 104.1. Ms. Powers is harmed when an individual, candidate, political committee or other regulated entity fails to report campaign finance activity as required by the FECA, denying her information that would assist her in making an informed choice among candidates. *See Akins*, 524 U.S. at 19, *quoting Buckley*, 424 U.S. at 66-67 (political committees must disclose contributors and disbursements to help voters understand who provides which candidates with financial support). Ms. Powers is further harmed when the FEC fails to properly administer the FECA's reporting requirements, limiting her ability to review campaign finance information.

Respondent

8. Crossroads GPS is a tax-exempt organization established in June 2010, organized under section 501(c)(4) of the Internal Revenue Code, and based in Washington, D.C.

Factual allegations

9. On June 27, 2012, Crossroads GPS began broadcasting an advertisement attacking Heidi Heitkamp, the Democratic nominee for Senate in North Dakota. *See* Press Release, Crossroads GPS Continues Issue Ads in North Dakota Calling for Action to Repeal ObamaCare, June 27, 2012 (attached as Exhibit A). Crossroads GPS said it spent \$180,000 on air time to broadcast the ad on broadcast and cable networks in North Dakota. *Id.* Crossroads GPS described the ads as “calling for Heidi Heitkamp to fight for the repeal of ObamaCare and support the ‘New Majority Agenda.’” *Id.*

10. The advertisement began by saying “Heidi Heitkamp promised ‘I would never vote to take away a senior’s health care or limit anyone’s care.’” *See* <http://www.youtube.com/watch?v=LTcOfc15byI&feature=plcp>. The ad continued: “But Heidi endorsed Obamacare, bragging, ‘It actually is a budget-saver.’ Obamacare cuts Medicare spending by \$500 billion, gives unelected bureaucrats the power to restrict seniors’ care, and millions of Americans could actually lose their existing health care.” The ad concluded by urging voters to “Tell Heidi: support the full repeal of Obamacare,” but provided no contact information. The ad ended with the narrator saying, “Support the New Majority Agenda at NewMajorityAgenda.org” while a graphic at bottom of the screen said, “Paid for by Crossroads Grassroots Strategies (GPS).”

11. Crossroads GPS updated the ad on June 29, 2012. The new ad also began by saying “Heidi Heitkamp promised ‘I would never vote to take away a senior’s health care or limit anyone’s care.’” *See* <http://www.youtube.com/watch?v=BZwjPOG7eEg&feature=plcp>. This version continued: “But Heidi endorsed Obamacare, bragging, ‘It actually is a budget-saver.’ But Obamacare raises half a trillion dollars in taxes on Americans, it cuts Medicare spending by \$500

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billion, and gives unelected bureaucrats the power to restrict seniors' care." As with the first version, the ad concluded by urging voters to "Tell Heidi: support the full repeal of Obamacare," and again provided no contact information. The ad also ended with the narrator saying, "Support the New Majority Agenda at NewMajorityAgenda.org" while a graphic at bottom of the screen said, "Paid for by Crossroads Grassroots Strategies (GPS)."

12. Ms. Heitkamp last held elected public office in January 2001, when her term as North Dakota's attorney general expired. See North Dakota Attorney General website, Former Attorneys General (attached as Exhibit B); Laura Litvan, Comeback Hopeful's MIA For 12 Years Key To Senate Control, *Bloomberg*, April 18, 2012 (attached as Exhibit C).

13. On June 13, 2012, Crossroads GPS began broadcasting a different advertisement attacking Ms. Heitkamp. See Press Release, Crossroads GPS Demands Action to Stop Reckless Spending and ObamaCare in Three-State Ad Blitz, June 13, 2012 (attached as Exhibit D).

Crossroads GPS said it spent \$2 million to purchase air time to broadcast ads attacking three Democratic Senate candidates, including air time on broadcast and cable networks in North Dakota to broadcast the ad attacking Ms. Heitkamp. *Id.*

14. The advertisement began by stating "Heidi Heitkamp supports Obamacare and predicted 'this bill will change the face of health care.'" See http://www.youtube.com/watch?v=Ew3hyhGrT_Y&feature=plcp. The ad continued: "She's right. Obamacare cuts Medicare spending by \$500 billion, gives unelected bureaucrats the power to restrict seniors' care, and now health care costs and premiums are likely to go up. That's not the change we need." The ad concluded by urging voters to "Tell Heidi: Obamacare is wrong for North Dakota," but provided no contact information. The ad ended with the narrator saying, "Support the New Majority

Agenda at NewMajorityAgenda.org” while a graphic at bottom of the screen said, “Paid for by Crossroads Grassroots Strategies (GPS).”

15. On May 18, 2012, Crossroads GPS began broadcasting an advertisement attacking Bob Kerrey, the Democratic nominee for Senate in Nebraska. See Press Release, Crossroads GPS Launches New TV Ad on Bob Kerrey’s Support for the Wall Street Bailout, May 18, 2012 (attached as Exhibit E). According to Crossroads GPS, the ad was broadcast statewide in Nebraska at a cost of \$260,000.

16. The advertisement began by saying Mr. Kerrey “supported the Wall Street Bailout while serving on the board of a company that tried to exploit it,” and that “Kerrey’s company used a bureaucratic ploy to get bailout funds, but the ploy failed.” See <http://www.youtube.com/watch?v=ow5dQM.Yaq0Q&feature=plcp>. The ad then said “these schemes were called a ‘disturbing trend’ by a an independent watchdog, violating the spirit of the law to jump on the gravy train. For ‘Bailout Bob Kerrey’ it’s Wall Street ways, not Nebraska values.” The ad concluded with a graphic urging voters to “Tell Bailout Bob Kerrey . . . Support Balanced Budgets, Not Bailouts,” and listed the phone number of Mr. Kerrey’s campaign. As the ad ended, a graphic at bottom of the screen said, “Paid for by Crossroads Grassroots Strategies (GPS).”

17. Mr. Kerrey last held elected public office in January 2001, when his term as U.S. Senator expired. See Democratic Candidate Bob Kerrey For US Senate, *Associated Press*, May 2, 2012 (attached as Exhibit F).

18. On July 10, 2012, Crossroads GPS began broadcasting an advertisement attacking Tim Kaine, the Democratic nominee for Senate in Virginia. See Press Release, Crossroads GPS

Launches Three-State Issue Advocacy Push, July 10, 2012 (attached as Exhibit G). Crossroads GPS said it spent \$2.5 million to purchase air time to broadcast ads attacking three Democratic Senate candidates, including air time on broadcast and cable networks in Virginia to broadcast the ad attacking Mr. Kaine. *Id.* The *Washington Post* reported Crossroads GPS spent \$1.1 million on air time for the one ad against Mr. Kaine. Anita Kumar, Crossroads GPS Targets Tim Kaine In New TV Ad, *Washington Post*, July 10, 2012 (attached as Exhibit H).

19. The advertisement began by saying "Tim Kaine left Virginia for Washington, and was a cheerleader for massive spending. . . . But it actually wasted money studying ants in Africa." See <http://www.youtube.com/watch?v=CXQc0pQgMGY&feature=plcp>. The ad then showed Mr. Kaine saying "this stimulus is critically important," and responded, "Really, how? To upgrade politicians' offices." The ad next showed Mr. Kaine saying, "These are investments that will put people to work right away," and commented, "but it failed miserably." The ad concluded by urging voters to "tell Tim Kaine, for real job growth, stop backing reckless spending." The ad ended with the narrator saying, "Support the New Majority Agenda at NewMajorityAgenda.org" while a graphic at bottom of the screen said, "Paid for by Crossroads Grassroots Strategies (GPS)."

20. Mr. Kaine last held elected public office in January 2010, when his term as governor of Virginia expired. See Chris Cillizza, Tim Kaine Announces For Senate In Virginia, *Washington Post*, April 5, 2011 (attached as Exhibit I). Mr. Kaine also served as chairman of the Democratic National Committee from 2009 through 2011. *Id.*

21. Crossroads GPS has not filed any reports with the FEC regarding any of these advertisements. See Crossroads GPS independent expenditure reports, available at: <http://query.nictusa.com/cgi-bin/fecimg/?C90011719>.

Count I

22. An "independent expenditure" is an expenditure by a person for a communication "expressly advocating the election or defeat of a clearly identified candidate" that is not coordinated with a candidate or a political party. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16(a).

23. The Commission's regulations define "expressly advocating" as any communication that either use phrases such as "Smith for Congress" or "Bill McKay in '94," 11 C.F.R. § 100.22(a), or "[w]hen taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because - (1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action," 11 C.F.R. § 100.22(b).

24. The FECA requires a person or group that makes independent expenditures aggregating \$10,000 or more in a given election in a calendar year up to the 20th day before the date of an election to file a report describing the expenditure with the Commission within 48 hours. 2 U.S.C. § 434(g)(2)(A). Commission regulations specify that the report must be filed not later than "11:59 p.m. Eastern Standard/Daylight Time on the second day following the date

on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated.” 11 C.F.R. § 109.10(c).

25. The FECA also requires any person or group (other than a political committee) that makes independent expenditures aggregating more than \$250 in a calendar year to file reports identifying certain contributors to the person or group, and information regarding the independent expenditure. 2 U.S.C. § 434(c). Commission regulations specify these reports must be filed quarterly. 11 C.F.R. § 109.10(b).

26. The advertisements Crossroads GPS broadcast against Ms. Heitkamp, Mr. Kerrey, and Mr. Kaine were independent expenditures, but Crossroads GPS failed to report any of them to the Commission.

27. Both versions of the advertisement Crossroads GPS broadcast against Ms. Heitkamp starting on June 27, 2012 urged viewers to “Tell Heidi: support the full repeal of Obamacare.” In addition, Crossroads GPS described the ads as “calling for Heidi Heitkamp to fight for the repeal of ObamaCare.” Ms. Heitkamp, however, has not held public office in more than 11 years, and currently has no role in making public policy. In this context, telling Ms. Heitkamp to support the full repeal of Obamacare can only be construed as telling her what her policies should be if she is elected to the Senate. In addition, the advertisement provided no contact information, demonstrating that the ad’s actual intent was not to encourage viewers to tell Ms. Heitkamp anything. The advertisement’s only reasonable interpretation, therefore, is to encourage actions to defeat Ms. Heitkamp, and its electoral portion is unmistakable, unambiguous, and suggestive of only one meaning.

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28. The advertisement Crossroads GPS broadcast against Ms. Heitkamp starting on June 13, 2012 similarly urged viewers to "Tell Heidi: Obamacare is wrong for North Dakota." Again, Ms. Heitkamp has not held public office in more than 11 years, and currently has no role in making public policy. In this context, telling Ms. Heitkamp Obamacare is wrong for North Dakota can only be construed as telling her what her policies should be if she is elected to the Senate. In addition, the advertisement provided no contact information, demonstrating that the ad's actual intent was not to encourage viewers to tell Ms. Heitkamp anything. The advertisement's only reasonable interpretation, therefore, is to encourage actions to defeat Ms. Heitkamp, and its electoral portion is unmistakable, unambiguous, and suggestive of only one meaning.

29. The advertisement Crossroads GPS broadcast against Mr. Kerrey starting on May 18, 2012 urged viewers to "Tell Bailout Bob Kerrey . . . Support Balanced Budgets, Not Bailouts." Mr. Kerrey has not held public office in more than 11 years, and currently has no role in making public policy. In this context, telling Mr. Kerrey to support balanced budgets, not bailouts, can only be construed as telling him what his policies should be if he is elected to the Senate. In addition, the only contact information the advertisement provided was the phone number of Mr. Kerrey's campaign, demonstrating that the ad was directed toward taking political action. The advertisement's only reasonable interpretation, therefore, is to encourage actions to defeat Mr. Kerrey, and its electoral portion is unmistakable, unambiguous, and suggestive of only one meaning.

30. The advertisement Crossroads GPS broadcast against Mr. Kaine starting on July 10, 2012 urged viewers to "tell Tim Kaine, for real job growth, stop backing reckless spending."

Mr. Kaine has not held public office in more than two years, and currently has no role in making public policy. In this context, telling Mr. Kaine to stop backing reckless spending can only be construed as telling him what his policies should be if he is elected to the Senate. In addition, the advertisement provided no contact information, demonstrating that the ad's actual intent was not to encourage viewers to tell Mr. Kaine anything. The advertisement's only reasonable interpretation, therefore, is to encourage actions to defeat Mr. Kaine, and its electoral portion is unmistakable, unambiguous, and suggestive of only one meaning.

31. On information and belief, Crossroads GPS spent more than \$10,000 in 2012 on each of the elections of Ms. Heitkamp, Mr. Kerrey, and Mr. Kaine for the Senate.

32. By failing to file with the Commission any reports required by the FECA after a person or organization makes an independent expenditure, Crossroads GPS violated 2 U.S.C. § 434 and 11 C.F.R. § 109.10(c).

Count II


33. An independent expenditure or electioneering communication in the form of a communication transmitted through television must include a disclaimer. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4). The communication must include the audio statement that "[the person paying for the communication] is responsible for the content of this advertising," conveyed by a representative of the person paying for the communication either in an unobscured, full-screen view of the representative or in a voicover. 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii). The communication also must "clearly state the full name and permanent street address, telephone number, or World Wide Web address of the person who paid for the communication, and that the communication is not authorized by any candidate or candidate's committee." 2

U.S.C. § 441d(a)(3); 11 C.F.R. § 110.11(b)(3). The disclaimer must be displayed in a "clearly readable manner." 2 U.S.C. § 441d(d)(2); 11 C.F.R. § 110.11(c)(4)(iii).

34. All of the television advertisements broadcast by Crossroads GPS were independent expenditures, but none of them included either the audio or written disclaimer stating Crossroads GPS was responsible for the content of the advertisements, a statement that the communication was not authorized by any candidate or candidate's committee, or Crossroads GPS's address, phone number, or website. By failing to include the disclaimer, Crossroads GPS violated 2 U.S.C. § 441d(d)(2) and 11 C.F.R. § 110.11(c)(4).

Conclusion

WHEREFORE, Citizens for Responsibility and Ethics in Washington, Noah Bookbinder, and Robin Powers request that the FEC conduct an investigation into these allegations, declare the respondent to have violated the FECA and applicable FEC regulations, and order respondents to correct these violations by filing independent expenditure reports for each of the above referenced communications and to identify and make public any person who made a contribution for the purpose of furthering the reported independent expenditures. In addition, the complainants request that the FEC impose sanctions appropriate to these violations and take such further action as may be appropriate.




ON BEHALF OF COMPLAINANTS

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Citizens for Responsibility and Ethics in
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(202) 408-5565 (phone)
(202) 588-5020 (fax)

Verification


Citizens for Responsibility and Ethics in Washington, Noah Bookbinder, and Robin Powers hereby verify that the statements made in the attached Complaint are, upon information and belief, true. Sworn pursuant to 18 U.S.C. § 1001.



Noah Bookbinder

Robin Powers

Sworn to and subscribed before me this 18th day of November, 2015.



Notary Public

